

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 141 OF THE ACADEMIC APPEALS COMMITTEE

September 6th, 1991

To the Academic Board,  
University of Toronto.

Your Committee reports that it held a hearing on Friday, September 6th, 1991 at 9:30 a.m. in the Board Room, Simcoe Hall at which the following were present:

Professor J. B. Dunlop, Chairman  
Professor C. C. Brodeur  
Mrs. D. Hellebust  
Professor J. Nautiyal  
Mr. C. Walker

Ms Susan Girard, Acting Secretary

In Attendance:

Dr. *N.* the appellant  
Mr. P. J. Pliszka, of the firm of Fasken Campbell Godfrey,  
counsel for the appellant  
Dr. J. L. Provan, for the Faculty  
Mr. T. Pinos, of the firm of Cassels, Brock and  
Blackwell, counsel for the Faculty

At a meeting on September 6th, 1991, the Academic Appeals Committee of the Governing Council heard an appeal by Dr. *No a foreign* ophthalmologist, from a decision of the Appeals Committee of the Faculty of Medicine upholding a ruling by the Department of Ophthalmology that the appellant be required to discontinue the residency program in ophthalmology. The appellant had failed in the second year of the three-year program. The decision was based not only on the examination results but on the judgment that the state of the appellant's knowledge and the level of his performance were such that he would be unable to complete the program and subsequently pass the examination of the Royal College of Physicians and Surgeons. Thus he would not qualify to practise in Ontario.

The appeal was based on extenuating circumstances, the appellant's constant concurrent need to earn enough money to keep himself and pursue his program. The extra physical and intellectual burden robbed him of the opportunity to show his true ability in the program. He also claimed that other foreign students seeking accreditation failed in the same examinations but were allowed to continue, a situation he felt was discriminatory. The Committee's decision is that the appeal must be dismissed.

THE APPELLANT'S BACKGROUND

The appellant had obtained his first medical degree in *Europe* in 1956 and later had qualified as an ophthalmologist. He had practised *there* for almost 20 years. He had then been posted to Libya for a five-year term, evidently under an assistance program. However, after two years his activities brought him into political disfavour and in 1978 he was recalled. Instead of going home he fled to Greece, living in refugee camps there, in Austria and in Italy. The appellant came to Canada in 1979 and from 1979 to 1983 he lived in Alberta.

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THE BACKGROUND TO THE PROBLEM

In 1983 the appellant came to Toronto in the hope of qualifying in Ontario. Through the Department of Ophthalmology in the University he was given a position as a clinical fellow to get him involved and then in 1985 he was offered and accepted a one-year term as an unfunded resident. Successful completion of the residency program followed by success in the examinations of the Royal College of Physicians and Surgeons is one principal method of qualifying for a licence as an ophthalmologist from the Ontario College of Physicians and Surgeons.

Only a small number of funded positions were available and there were many qualified applicants: possibly 10 times the number of places. In these circumstances even an unfunded position was not freely available and the offer was made out of sympathy for his plight and in the hope he could manage the program and qualify successfully. It was a significant benefit and was the best the Department could do for the appellant.

THE PROBLEM

The Department's hope of assisting the appellant was not realized. The subsequent agreement among teaching hospitals, the University and the Association of Interns and Residents that there should be no unfunded positions in future probably better reflected reality. The appellant could not manage concurrently to earn a living and meet the requirements of the program. It would be the rare individual who could.

The appellant worked at many things to earn enough to support himself, from painting and decorating to baby sitting. It would be an understatement to say that this, while involved in a program calling sometimes for as much as 17 hours a day, would be difficult to manage. In the first year he had considerable difficulty but was accepted for a second year on the condition that his performance improve. It did not. In December 1986 he failed the departmental written examination. In May of 1987 he failed the oral. He was required to withdraw.

The appellant asked to be allowed to do the examinations again. He continued to press for the opportunity "at any time". Just before the regular December examination the Department yielded and he was told he could try again. This gave him four days notice, which he said left him little time to study. However, as he had sought this very opportunity persistently and had last made the request a matter of days before it was granted, he could hardly blame anyone for his lack of preparedness. Further, according to the Chairman of the Department, the examination was supposed to test the candidate's long-term accumulated knowledge based on experience as well as independent reading rather than on a particular, formal course of study. Thus one would not really be able to prepare by studying just before the examination.

The appellant failed again and the decision that his residency should be terminated was upheld by the Faculty's Appeals Committee.

The extenuating circumstances offered to justify permitting the appellant another chance were, as described, related to the enormous drain on his time and his physical and intellectual capacity caused by the other activities. There is, obviously, some merit in the claim that he could have done better if freed of such burdens. One cannot be sure how much better since there was no record to which comparison might be made. But the Chairman of the Department and the co-ophthalmologist of the program were of the opinion that he would not have succeeded because the gap between his knowledge and the requirements of the Royal College of Physicians and Surgeons was too large and he was further hampered by his command of English.

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Beyond that, the conditions would be the same the next time because the appellant was still without means of financing his studies other than work. It was suggested by counsel on his behalf that he should now be funded but his claim, relative to other applicants, was, if anything, worse now than it had been before. The basis for allowing an appeal simply is not there.

As far as the other students were concerned, their circumstances were quite different from those of the appellant and they could not be examples of unequal treatment of similar cases.

It is a matter of regret to the Committee as it was to the Chairman of the Department, that determination such as the appellant has displayed cannot be better rewarded.

The appeal is dismissed.

Secretary  
September 25th, 1991

Chairman

